Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Review of Regulatory Requirements for	)	CC Docket No. 01-337
Incumbent LEC Broadband	)	
Telecommunications Services	)	

COMMENTS OF ALCATEL

I. Introduction

Alcatel USA, Inc. ("Alcatel") hereby responds to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") concerning the proper regulatory requirements for Incumbent LEC ("ILEC") broadband services.[1] Alcatel is a wholly-owned subsidiary of Alcatel S.A., a manufacturer of telecommunications and Internet equipment headquartered in France. Globally, the Alcatel group is a leader in digital subscriber line equipment, terrestrial and submarine optical networks, satellites, public switching, fixed wireless access, and intelligent networks. Alcatel operates in 130 countries, had sales over $25 billion in 2001, and has over 90,000 employees throughout the world. The U.S. market accounts for 20% of Alcatel's sales, which includes the ASAM Digital Subscriber Line Access Multiplexers ("DSLAMs") and LiteSpan® Next Generation Digital Loop Carrier ("NGDLC")

[1] *Review of Regulatory Requirements for Incumbent LEC Broadband Services ("NPRM"); SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services for Forbearance From Dominant Carrier Regulation of These Services ("SBC Petition"),* CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360, 16 FCC Rcd 22745 (rel. Dec. 20, 2001).

systems, the products responsible for its market leading position in U.S. broadband access.

Alcatel submits these comments generally supporting the distinction between an ILEC's provision of services in the local exchange and exchange access markets, in which they control essential facilities and supra-majority market share, and the broadband access market,[2] in which competitors may serve customers through alternative technological facilities and the ILEC lacks market power. As an equipment supplier to the ILECs, competitive local exchange carriers ("CLECs"), and the interexchange carriers ("IXCs"), Alcatel is in a unique position to provide the Commission with information concerning the distinct equipment used by telecommunications carriers to provide broadband services for which it is subject to effective competition. In these comments, Alcatel will first comment on the questions raised by the NPRM concerning whether the ILECs' provision of broadband access services should be held nondominant, thus relieved of certain heightened regulations, and, second, it will provide information from the perspective of a communications equipment supplier. The information provided in the latter part of these comments should assist the Commission in establishing a regulatory regime that identifies and recognizes the distinction between the ILECs provision of POTS, which is subject to dominant carrier regulations, and their provision of broadband access services, which are subject to effective competition, based on the enhanced and additional equipment used to provide such services.

[2] Alcatel's use of the term "broadband access market" is used to distinguish the non-circuit switched services provided by an ILEC and includes the advanced services and high-speed services markets the FCC examines in the §706 Reports.

II. The Beneficial Effects of Broadband Deregulation Are Clearly in the Public Interest.

The rapid deployment of multiple broadband facilities and services at competitive prices is vital to the United States for a variety of compelling economic reasons. The benefits of the information technology sectors to the economy in the late 1990s was evident by the number of jobs created, the affordable services delivered to consumers, and the growth and productivity as a whole. However, the Internet, in its current form, has reached a plateau of functionality and value to consumers, and the next generation of services will depend on the availability and affordability of broadband access.[3] A recent estimate of the economic benefits from widespread deployment of high-speed Internet and broadband services is placed at between $100-$500 billion per year.[4]

The beneficial effects of such a deployment go far beyond the broadband access market itself as such deployment would result in increased demand for a wide variety of content, faster microprocessors, computers, data storage, and optical fiber. Moreover, the rapid deployment of competitive broadband access services will lower prices, increase subscription rates, and increase traffic and demand first on the edge and then in the core of the Internet network. This traffic increase will enlarge the demand for domestic and international backbone services, which are currently experiencing a significant excess in capacity and shortcomings in demand.[5]

---

[3] For an in-depth discussion of the current and future economic benefits of broadband deployment see Letter from Robert Crandall, Senior Fellow, *The Brookings Institute*, et. al., to Donald L. Evans, Secretary, *U.S. Department of Commerce*, et. al., (Dec. 4, 2001).

[4] *Id.*

[5] The spot price for bandwidth has fallen 90 percent. Romero & Schiesel, *The Fiber Optic Fantasy Slips Away*, NY Times, Feb. 17, 2002.

These beneficial effects on deployment, price, traffic, and content, however, will not be realized unless all participants in the broadband access market are subject to similar regulatory treatment and allowed to engage in vigorous competition. The Commission has recognized that "…broadband is evolving across multiple electronic platforms as traditional wireless, cable, satellite, and wireline providers have expended substantial investments in broadband capable infrastructures."[6] Each of these platforms include legacy services that are separate and distinct from the broadband market, and the Commission must recognize this distinction and not impose heightened regulations on the broadband services of any one platform due to the market participant's position in its legacy market. The unjustified application of dominant, heightened regulations on a market participant that lacks the market power necessary to adversely affect competition in that market can retard the development of effective competition in the entire market.[7] Furthermore, such disparate regulatory treatment hampers broadband deployment through telecommunications facilities, which slows subscription rates and provides a competitive advantage to the major trading partners of the United States.[8]

III. The Broadband Access Market is Distinct and Separable from the Legacy Local Exchange and Exchange Access Markets.

Based on product uses and traditional Commission tests for defining relevant product markets, the local exchange and exchange access markets are wholly distinct and

---

[6] *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, Notice of Proposed Rulemaking (released Feb. 15, 2002) ("Title I NPRM") ¶4. *See Also NPRM* at ftnt. 7 and *SBC Petition* at ftnt. 11.

[7] Reply Comments of the Department of Justice, *Competition in the Interstate Interexchange Marketplace*, CC Docket No. 90-132, filed Sept. 29, 1990, at 26, ftnt. 42..

[8] *See* Working Party on Telecommunications and Information Services Policies, *The Development of Broadband Access in OECD Countries, The Organization for Economic Cooperation and Development*, Oct. 29, 2001("OECD Report").

separable from the broadband market. In the past, the Commission has recognized such distinct markets in which one participant may possess market power and be subject to dominant carrier safeguards, yet be relieved of such heightened regulation to fully participate in a distinct competitive market.[9] Regulatory relief and ILEC participation in the wireless, information services, and long distance markets have had a beneficial effect for consumers in these markets. The argument for regulatory relief in the broadband access market is no less compelling then any other market in Commission precedent.

First, the distinctions between these markets are fairly obvious: the local exchange and exchange access markets consist of voice and narrowband data services whereas the broadband market consists of a suite of services, including voice, data, and high-speed Internet. Consumers uses broadband access services primarily for high-speed data and Internet services, which would be unavailable through the circuit-switched, local exchange service provided by the ILEC. Broadband access is not interchangeable with either local exchange or exchange access service, thus should be recognized as a separate and distinct market.

Second, Commission precedent has recognized that advanced services were designed primarily for broadband Internet access, and that the provision of these services should be treated as a distinct product market.[10] The Commission based this determination on the fact that these new services included new features, such as access to high-bandwidth content and "always on" connections unavailable through the local

---

[9] *See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 12 FCC Rcd 15756 (1997) ("LEC Classification Order").

[10] *See Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner, Inc., and America Online, Inc., Transferors, to AOL Time Warner, Inc., Transferee*, 16 FCC Rcd 6547, ¶69 (2001).

exchange service.[11] The Commission's own definition of "advanced services" recognizes the distinct capabilities in this market that cannot be achieved through the use of the narrowband services in the traditional circuit-switched local exchange market.[12] Finally, the Commission's decision to not generally unbundle the packet switching network element was based on its conclusion that the advanced services market is distinct from the circuit switched market and one in which the ILEC does not retain a monopoly.[13]

IV. Subsections of the Broadband Access Market Exist Based on the Service and Platforms Employed.

The two broad market categories of mass market and larger business market identified by the Commission in previous market analyses are applicable to the broadband market.[14] In fact, these same distinctions are even more profound in the broadband market due to the success of inter-modal competition and the lack of reliance on the ILECs' infrastructure, particularly in the mass market submarket for broadband access services.

---

[11] *Id*.

[12] In the Commission's reports pursuant to Section 706 of the Communications Act, the Commission has defined "advanced services" to describe services and facilities with upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more that 200 kbps. *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Third Report, CC Docket 98-146, FCC No. 02-33 (rel. Feb. 6, 2002) "Third 706 Report"). The Commission also uses the term "high-speed" to describe services with over 200 kbps in at least one direction. *Id*. Such speeds are unachievable with traditional circuit-switched infrastructure, which are limited to speeds generally between 14.4 kbps and 53 kbps, unless the significant investments are made to condition the local loop and split the circuit-switched traffic from the Internet traffic. *Title One NPRM* at ftnt. 18.

[13] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* ("UNE Remand Order") at ¶308; codified at 47 CFR §51.319(c)(4).

[14] *NPRM* at ¶ 20.

A. A Mass Market for Broadband Access Service is a Distinct Submarket From the Larger Business Market.

A mass market subsection of the broadband access market has emerged that primarily serves residential and small business users. In the mass market for broadband services, inter-modal competition between alternative technological platforms is far more advanced when compared with the status of intra-modal competition within any of these platforms. While intra-modal competition provides competitive pressure on end-user prices, when based on a resale or UNE model it does not enhance facilities-based competition or provide valuable network redundancies, and it could not have been developed or could survive without strong regulatory intervention. Even with this regulatory intervention, many non-facilities based intra-modal competitors have failed. In this market, the facilities-based inter-modal competition that has developed has created vigorous, sustainable competition between the various platforms, with no one platform acquiring anticompetitive market power, control of bottleneck facilities or essential inputs.

The Commission has recognized four main broadband platforms in the mass market for broadband access services, including DSL over copper wire, cable modem, terrestrial wireless, and satellite.[15] According to the Commission's most recent Section 706 Report, cable modem providers enjoy a majority market share (53%) in the mass market submarket for broadband access, ADSL provided predominately by the ILECs maintains a 28% share in this market, and satellite and wireless currently possess a small, but rapidly increasing, share. [16] The Commission also recognized numerous developments in the technologies capable of supporting advanced services, including 3G

[15] *See Third 706 Report*.

mobile wireless, the new DOCSIS 1.1 cable modem standard, DSL advances in speed and extension, and two-way satellite platforms. Additionally, the Commission should recognize that a fifth technological platform for the delivery of broadband access to the mass market is being developed in Power Line Technology.[17]

Due to the inter-modal means of competition that has developed in this submarket, retail and wholesale markets are not equally developed in each platform. Broadband access through telecommunications facilities does include both a retail and wholesale element, with the Commission's regulation ensuring non-facilities based entry for non-incumbents. In the other platforms, however, there is no regulatory mandate for unbundling or regulated resale pricing, and no viable resale or wholesale market currently exists. Competitors seeking to provide broadband access services via cable modem, satellite, or via fixed wireless services do not have a regulatory entitlement to wholesale services, and they will seek to provide service over proprietary facilities.

B. The Large Business Submarket for Broadband Access Services is Distinct From the Mass Market.

The large business submarket of the broadband access market is distinct from the mass market, with most users obtaining broadband service through fiber optic connection from a variety of well established providers other than the ILECs. Likewise, large business customers have much greater purchasing power and this submarket is more well developed compared to the mass market.

---

[16] *Id*. at Appendix C.

[17] *See Consumer Broadband Satellite Services: A Global Analysis of Key Players and Market Opportunities*, Northern Sky Research, LLC (Nov. 5, 2001) at E-5.

Alcatel agrees with SBC in its petition that the preeminent means of providing broadband access service in the large business market includes Frame Relay and ATM service, along with several other platforms. According to SBC's petition and the testimony of Criterion Economics, LLC, SBC's Frame Relay revenues account for only 11 percent of the Frame Relay revenues in its region and its ATM revenues account for only 16.5 percent of the ATM revenues in its region.

One clear distinction between the mass market and the larger business submarket is the potential for an ILEC to control a bottleneck facility necessary to deliver the service. In this case, the special access connection from the provider's point of presence to the customer's premises is often provided by the ILEC. However, the Commission's ongoing proceeding to determine whether standard performance measurements for an ILEC's provisioning of special access are warranted,[18] the ILEC's obligation to provide nondiscriminatory pricing and service, Federal and state regulatory oversight, and the self-provisioning of these facilities by the preeminent participants in this market, should constrain any anticompetitive behavior by the ILECs.[19]

C. Whether narrowband would constrain any anticompetitive activity by the ILECs in the broadband market.

The broadband access market and the advanced services provided in this market are sufficiently distinct from the narrowband market that the latter could not be considered an adequate substitute to any broadband service. The Commission recognized this distinction in data collected and presented in the 706 Report in which consumers

[18] *Performance Measurements and Standards for Interstate Special Access Services, et al*, CC Docket No. 01-321, Notice of Proposed Rulemaking, FCC No. 01-339 (rel. Nov. 19, 2001) ("Performance Measurements NPRM").

stated they enjoyed the benefits of advanced services that are distinct from narrowband services, such as the service always being available, the additional services attainable only at speeds in excess of narrowband capabilities, and the ability to use such services without sacrificing simultaneous use of the telephone.

Any anticompetitive activity, including predatory pricing, that an ILEC or any other broadband access provider may engage in this market could be contained by the competitive pressures of the alternative technological platforms in the same market, such as cable modem, fixed wireless, and satellite. As previously mentioned, the broadband access service market is enjoying vigorous inter-modal competition for mass market consumers in which participants are not reliant on the bottleneck facilities of any competitor possessing market power. Any attempt to engage in monopolistic behavior by an ILEC will be noticeable by competitors and regulators alike and will ultimately be futile and ineffective.

V. The ILECs Do Not Possess Market Power in the Broadband Market.

The ILECs do not possess market power in the broadband market;[20] in fact, they possess less than majority market share and would be unable to successfully effectuate any anticompetitive behavior. Any attempt by an ILEC to engage in such behavior through predatory pricing, raising the price of service in an attempt to maximize profits, or raising the cost of its competitor's essential inputs would be fruitless due to the strict oversight of the ILECs' dominant services, the ILECs' lack of market share in the

---

[19] *Declaration of Robert W. Crandall and J. Gregory Sidak,* Attachment 1 to *SBC Petition* ("Declaration"), ¶126.

[20] *See UNE Remand* at ¶308 [recognizing the ILEC was not a monopoly in the advanced services market, thus the packet switching network element did not have to be unbundled, except in limited circumstances].

broadband access market, and the lack of reliance on ILEC facilities by competitive providers.

In the NPRM, the Commission requested commenters analyze ILECs' market position in each relevant broadband service market according to criteria established by Commission precedent.[21] In determining whether a firm possesses market power, the Commission previously has focused on factors such as market share, supply and demand elasticity, entry barriers, potential competition, the cost structure, size, or resources of the firm, and control of bottleneck facilities.

In the case of the broadband access market for mass markets, the ILECs clearly do not possess market power due to their lack of majority market share, the number of alternative providers, effective competition, the resources of its competitors, and their lack of control over bottleneck facilities. As noted in the Commission's most recent Section 706 report, of the almost 10 million High-Speed Lines in the United States, ADSL service possessed only 28% of the market, whereas cable modem providers continue to maintain their sizeable marketplace advantage with 53% of these lines.[22] The firms competing with the ILECs in this market are well established organizations with more than adequate capital to provide effective competition with the ILECs.[23] These firms price similar services within the same range as ADSL prices of the ILECs, and consumers would have the option of receiving their broadband access from an alternative provider if the ILEC attempted to maximize profits exclusively through an increase in

---

[21] *NPRM* at ¶28.

[22] *706 Report* at App. C. This disparity between DSL and Cable Modem is expected to increase, with high-speed lines in service via cable modem service increasing 45% in the first half of the year 2001 and ADSL lines increasing 36%. *Id.* at App. C 2.

[23] In 2000, the cable industry spent a total of $15.5 billion on the construction of new plant and upgrades. *Id.* at ¶65. In the same year, the ILECs spent $29.4 billion in investment, of which 11% - 25% was invested in data or broadband access infrastructure. *Id.* at ¶69.

ADSL prices. Finally, the strength of inter-modal competition in this market negates any concern that the ILECs possess control over facilities that could be considered "bottleneck" or "essential."

Likewise, in the case of the larger business submarket for broadband access, the ILECs do not possess market power due to their lack of majority share, the number of well established alternative providers, supply and demand elasticity, and regulatory restrictions. According to the Criterion Economics study, the national market leaders in both Frame Relay and ATM services are AT&T, WorldCom, and Sprint.[24] The ILECs are estimated to possess an in-region market share in the Frame Relay and ATM markets of 15.2 percent and 14 percent, respectively.[25] The ILECs and alternative providers in this market are providing the same service (i.e. frame v. frame and ATM v. ATM), thus any attempt by an ILEC to increase profits by increasing prices will be constrained by competitive alternatives. Finally, while the ILECs do possess control over special access facilities that could be considered essential, these facilities are subject to competition in many areas of the country, regulatory oversight, and the Commission has initiated a proceeding to determine whether standard performance measurements in the provisioning of these facilities are warranted.[26]

VI. Specific Issues Raised in the NPRM.

A. Whether the ILEC can raise prices by restricting output in either markets.

[24] *Declaration* at ¶110-112.
[25] *Id.* at ¶52-53.
[26] *See Performance Measurements NPRM*.

An ILEC could not raise prices in either the mass market or large business broadband markets by unilaterally restricting its output due to effect of competition from alternative platforms, primarily cable television in the mass market and the interexchange carriers in the larger business market. As noted in the Commission's own study pursuant to Section 706 of the Act, broadband access via cable modem service maintains a majority share of this market and these providers have significantly increased investment to upgrade their facilities and offer service to more consumers. Additionally, two-way satellite and, to a lesser extent, fixed wireless providers are rapidly increasing their customer base and market share. Any attempt by an ILEC to increase market power in the broadband access market exclusively by restricting its output of DSL services would not be in its own best interest since consumers, in most geographic markets, have viable, cost effective alternatives, such as the MSOs or other alternative technological platforms.

B. Whether the ILEC can raise the costs of its competitors by increasing the price of essential inputs and bottleneck facilities that the ILEC controls.

An ILEC cannot raise the costs of its competitors' service by increasing the price of essential inputs and bottleneck facilities in the mass market submarket since most competitors do not rely on the ILECs' facilities to provide their service. In this submarket, the ILEC's inter-modal competitors do not use any essential inputs or bottleneck facilities that the ILEC controls, thus any increase in price of these facilities will not impact the cost of service for the ILEC's competitors.

In the large business submarket for broadband access services, the ILEC's do provide special access facilities to their competitors, but any attempt raise the prices of these facilities in an anticompetitive manner would either be ineffective or would be

subject to regulatory enforcement. In many geographic areas, competitors may acquire special access facilities from alternative providers. In those areas where viable competition for these services does not exist to constrain such behavior, the ILECs are subject to strict regulatory oversight at the Federal and state level. Any attempt by the ILEC to adversely affect the market through its special access services would be noticeable by its competitors and subject to the performance standards and penalties being finalized by the Commission in a separate proceeding.

C. Whether the ILEC can leverage its market power from the local exchange and exchange access markets to the broadband market.

An ILEC could not leverage its market power from its dominant markets to the broadband market due to the regulatory oversight and pricing restrictions in the local exchange and exchange access markets. The Commission and state regulatory agencies subject ILECs to heightened dominant carrier regulations in their provision of local exchange and exchange access services. In the LEC Classification Order, the Commission concluded that an ILEC would be unlikely to have sufficient market shares upon entry to the interexchange market to allow them to profitably raise and maintain prices above competitive levels. Furthermore, the various competitive safeguards imposed on the ILECs before entering the interexchange market, including the separate affiliate requirement, would prevent the ILECs from even attempting such behavior.[27]

The precedent established in the LEC Classification Order is applicable to the ILECs participation in the broadband access market. Current safeguards in the local exchange and exchange access markets make it difficult for the ILEC to cross subsidize its DSL service, and the effective competition in the broadband access market makes it

highly unlikely that the ILEC could raise and maintain prices above competitive levels in order to maximize anticompetitive profits once the competitors have left the market.

Additionally, Alcatel advocates the Commission mandate the ILECs abide by the non-structural safeguards established in the Computer III proceeding[28] in order to provide broadband access services, rather than impose structural safeguards such as a separate affiliate for ILEC provided broadband access services. In the event an ILEC attempts to leverage its market power into the broadband service market, the records mandated by these safeguards will make it less burdensome for the Commission or any other party to determine whether such behavior has occurred. Due to the rapid advances in and convergence of varying technologies, the cost of establishing and maintaining a separate affiliate could be significant, which would ultimately be passed on to consumers.

D. Whether the ILEC can affect competition by discriminating against unaffiliated entities.

An ILEC could not adversely affect competition by discriminating against unaffiliated entities due to the lack of reliance on these facilities and regulatory oversight of these facilities. In the mass market, competitive technologies do not rely on the ILECs' bottleneck facilities and deploy their own facilities-based access to the customer. It is unclear how the ILEC could discriminate against unaffiliated entities when its primary competitors are not relying on the ILEC for services or access to facilities.

In the larger business market, an ILECs' competitors may often rely on the ILEC for special access services, which would provide the ILEC with an opportunity to

---

[27] *See LEC Classification Order*.

[28] *See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services and 1998 Biennial Regulatory Review-Review of Computer III and ONA Safeguards and Requirements*, Report and Order, 14 FCC Rcd 4289 (1999).

discriminate, but, as previously discussed, competitive alternatives and regulatory safeguards do exist that would constrain ILECs from engaging in such behavior.

E. Whether the ILECs could acquire market power through a price squeeze.

An ILEC could not acquire market power through a price squeeze in which it would raise its rival's cost in the exchange access market to subsidize its broadband services. First, in other markets the ILECs have entered, such as the interexchange and information service[29] markets, the Commission has examined similar concerns and determined that regulatory safeguards should prevent such behavior. Alcatel is not aware of any fundamental distinction between the ILECs entry into the broadband access market that would justify a departure from this precedent. In fact, the broadband market appears to be less at risk due to the entrenched competition in both the mass market and larger business market. Second, the non-structural safeguards advocated by Alcatel will provide the Commission with an additional tool to monitor and prevent such anticompetitive cross-subsidization.

VII. Forbearance Analysis

Section 10(a) of the Telecommunications Act of 1996 requires the Commission to forbear from applying any regulation or any provision of the Communications Act of 1934, as amended, to a telecommunications carrier or service if it determines that (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classification, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory; (2) the regulations are not necessary for the protection of

[29] *See NPRM* at ¶13.

consumers; and (3) forbearance is in the public interest.[30] For these purposes, forbearance is in the public interest if it promotes competitive market conditions.[31] The Commission forbearance authorization is limited to telecommunications carriers and cannot be used to circumvent the interconnection obligations of ILECs under §251(c) or condition precedent criteria for Bell entry into the interLATA services market under §271.[32]

In the matter of the regulatory requirements for ILEC broadband telecommunications services, the Commission can demonstrate that all of the elements of Section 10 are satisfied and the ILECs should be held nondominant in their provision of broadband services and relieved from the tariffing requirements under Section 203 of the Communications Act.[33]

First, the enforcement of Section 203 is not necessary to ensure that the charges and practices of ILEC provided broadband services are just and reasonable and are not unjustly or unreasonably discriminatory due to the ILECs' lack of market power and the strength of its competitors. In the IXC Forbearance Order, the Commission rejected permissive detariffing and mandated interexchange carriers detariff their services, in part, due to the lack of market power of any one carrier and the alternatives available to consumers if any carrier attempted to unreasonably increase its rates.[34] This decision was upheld by the D.C. Circuit Court of Appeals,[35] and there is no evidence that the prices charged in the interexchange marketplace have unjustly or unreasonably increased since

---

[30] 47 USC §160(a).
[31] 47 USC §160(b).
[32] 47 USC §160(d).
[33] 47 USC §203.
[34] *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 245(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996) (*Second Report and Order*).

detariffing went into effect. In the broadband access market, the Commission should also hold that broadband services should be detariffed since the ILECs do not possess market power in this market and any attempt by an ILEC to unreasonably price its service would not succeed and would result in consumers migrating to alternative platforms, such as cable television, satellite, and fixed wireless.

Second, the enforcement of Section 203 is not necessary for the protection of consumers in the broadband access market. In fact, this mandatory disclosure of prices by one market participant has an adverse effect on consumers by creating a price leader that stifles the competition that would otherwise develop,[36] thus it would be in the best interest of consumers to detariff these services and allow service contracts to be negotiated privately.

Third, forbearance of the Section 203 tariffing requirements and dominant carrier regulations is clearly in the public interest due to the vast benefits a competitive broadband access market can bring to the public. As noted earlier in these Comments, widespread, competitively priced broadband services will have a beneficial impact on the economy as a whole and the communications sector in particular, and Alcatel is not aware of any contrary argument that broadband deployment would not be in the public interest. Of the primary participants in the broadband market, only ILECs are subject to the tariffing mandates and cost disclosures of the dominant carrier regulations. The

---

[35] *MCI WorldCom, Inc. v. FCC*, 209 F.3d 760 (D.C.Cir. 2000).

[36] In the International market for switched services, the Commission abandoned disclosure of cost information on competitive routes in which the carrier lacked market power. Such cost disclosures were not in the public interest because of the chilling effect they had on competition. *See In re 1998 Biennial Regulatory Review-Reform of the International Settlements policy and Associated Filing Requirements*, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7989 (1999).

current disparate regulatory treatment of the ILECs does not promote competitive market conditions, which is contrary to the public interest goal stated in §10(c) of the Act.

VIII. The Commission Can Distinguish These Markets, in part, by the Deployed Facilities Used to Provide Broadband Services.

The facilities that the ILEC deploys to compete in the competitive broadband marketplace consist of equipment enhancements and additions, currently, to the legacy copper-based network and, in the future, to entirely new fiber-based networks to the neighborhood and to the home. These facilities are being deployed to compete directly with enhancements and additions to the cable television networks, as well as other competing platforms. In the copper-based network, recent enhancements to provide broadband services include broadband access servers, next generation digital loop carriers("NGDLCs"), and Digital Subscriber Line Access Multiplexers ("DSLAMs"). Just as the cable television companies have enhanced their networks and set-top boxes to provide services other than the legacy video services, the ILECs have deployed NGDLC remote terminals and DSLAMs to provide services distinct from their legacy local exchange services.

A DSLAM may be placed in the carrier's central office or in a digital loop carrier system. The DSLAM is the point of interface between a number of subscriber premises and the carrier's network. The DSLAM combines the ability to terminate copper customer loops, to forward the voice channels, if present, to a circuit switch, to extract

data units for the data channels, and to combine data units from multiple loops onto one or more trunks that connect to a packet switch.[37]

The NGDLCs have been deployed by telecommunications carriers to extend the reach of their DSL service beyond the standard 18,000 feet. An NGDLC will provide remote aggregation on residential or commercial copper loops into a fiber-based link (up to OC-12) to access the network. LECs are upgrading preexisting DLCs to NGDLCs by placing the DSLAM in the remote terminal to extend the reach and the speed of their DSL services.

IX. Conclusion

Alcatel hereby petitions the Commission to determine that it is in the public interest to hold the ILECs nondominant in their provision of broadband access services. This competitive environment can be enhanced by removing some of the disparate regulations exclusive to the ILECs in this market, it can be protected through existing safeguards in those markets in which the ILECs continue to be held dominant.

Respectfully Submitted,

By: _____

Paul W. Kenefick
Senior Regulatory Counsel
ALCATEL USA, INC.
1909 K Street, NW
Suite 800
Washington, DC 20006
202-715-3709

March 1, 2002

[37] *UNE Remand* at ¶303.